

Appl. No. 10/054,628
Atty. Docket No. 7571RD
Reply Dated Sept. 2, 2004
Reply to Office Action of June 2, 2004

REMARKS

Claims 1-4 are pending in the present application and stand rejected.

Claim 1 has been amended to delete the phrase "cetyl hydroxy ethyl cellulose and other modified celluloses."

No new matter is believed to have been added. Consequently, entry of these amendments is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Applicants respectfully submit that the Office has failed to make a *prima facie* case for the obviousness rejections presented below. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. See *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967).

Claims 1-4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,609,587 to Roe (hereafter "Roe"). With regard to Claim 1, the Office states that "Roe discloses the present invention substantially as claimed. However, Roe does not disclose the exact amount of a rheological agent present in the lotion composition." The Office asserts that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Roe with the claimed amount of rheological agent, since discovering an optimum value of a results effective variable involves only routine skill in the art." Roe discloses the use of cellulose derivatives as stabilizers or antioxidants that can be added to enhance the shelf life of the lotion composition disclosed in Roe. Roe does not teach or suggest that such cellulose derivatives are used to affect the rheological properties of the Roe lotion composition. Applicants traverse the rejections.

Applicants have amended Claim 1 to delete the phrase "cetyl hydroxy ethyl cellulose and other modified celluloses." In light of the amendment, Roe fails to teach or suggest the rheological agents as claimed in the present application. Furthermore, Roe fails to teach or

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suggest the amount of rheological agent(s) present in a lotion composition. As a result, Roe fails to teach each and every limitation as found in Applicants' Claim 1.

Furthermore, since Claim 1 is nonobvious, Claims 2-4, dependent from and containing all the limitations of Claim 1, are likewise nonobvious.

CONCLUSION

Based on the foregoing amendment and reasons, Applicants respectfully submit that the Office has not made a *prima facie* case of obviousness and the rejections are therefore improper. Reconsideration and withdrawal of the rejections are respectfully requested. Allowance of each of the pending claims is earnestly requested so that the Request for Interference as submitted on January 22, 2002 may be granted.

Respectfully Submitted,

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